Response to Amendment

1.   This action is in reply to the amendment filed on 15 July 2009. Claims 21, 23, 25, 28-30, 34 and

38 have been amended. Claims 21, 23-26, 28-30, 32-35 and 37-39 are currently pending and have been

examined.

Inventorship

2.   This application currently names joint inventors. In considering patentability of the claims under

35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly

owned at the time any inventions covered therein were made absent any evidence to the contrary.

Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of

each claim that was not commonly owned at the time a later invention was made in order for the

examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior

art under 35 U.S.C. 103(a).

Claim Rejections - 35 USC § 112

3.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly
> claiming the subject matter which the applicant regards as his invention.

4.   Claims 21, 23-26, 28-30, 32-35 and 37-39 are rejected under 35 U.S.C. 112, second paragraph,

as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant

regards as the invention.

5.   Claims 21, 23-26, 28-30, 32-35 and 37-39 are generally narrative and indefinite, failing to conform

with current U.S. practice. They appear to be a literal translation into English from a foreign document

and are replete with grammatical and idiomatic errors. The claims are not clear as to fully describe the

applicant's invention.

6.   Claim 21 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to

particularly point out and distinctly claim the subject matter which applicant regards as the invention. The

claim recites "monitoring in the at least one mobile terminal, an operation situation based on execution of

said applications programs with the processing device" is unclear to the Examiner. The Examiner

interprets the limitation as monitoring by the at least one mobile terminal..."

Claim Rejections - 35 USC § 102

7.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for

the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8.   Claim 21, 23-24, 28, 32-33, 37 and 39 are rejected under 35 U.S.C. 102(e) as being anticipated

by Shioda et al. US Publication 2002/0044639 A1.

Claims 21 and 30:

Claim scope is not limited by claim language that suggests or makes optional but does not require steps

to be performed, or by claim language that does not limit a claim to a particular structure (MPEP §

2111.04). Accordingly, no patentable weight was given to the following claim language:

"detecting arrival of a timing for distributing information when said operation situation satisfies a

predetermined reference and starting execution of the waiting program with the processing device"

The term *when* implies the claim limitation is optional, therefore, no patentable weight was given to the

claim.

        As per claim 21, **Shioda** teaches a method and mobile terminal comprising:

monitoring, in the at least one mobile terminal an operation situation based on execution of said

application programs with the processing device (paragraphs 0028-0031).

transmitting, to the information distribution server, a request for distributing the information based on preset contents of the distributed information under the control of the processing device in accordance with execution of said waiting program (paragraphs 0028-0031).

receiving the information distributed from the information distribution server in response to the request for distributing the information at the at least one mobile terminal (paragraphs 0006, 0030 and 0031).

outputting the received information to an interface for outputting the information under the control of the processing device in accordance with execution of the waiting program (paragraph 0029).

Claims 23 and 32:

As per claims 23 and 32, **Shioda** teaches the method and mobile terminal of claims 21 and 30 as described above and further teaches *wherein the processing device monitors, as the operation situation, the presence or absence of calls, the amount of traffic, and the amount of various processed data using the at least one mobile terminal in accordance execution of the waiting program with the processing device mobile terminal* (paragraphs 0070).

Claims 24 and 33:

As per claims 24 and 33, **Shioda** teaches the method and mobile terminal of claims 21 and 30 as described above and further teaches *wherein the processing device detects the arrival of the timing for distributing the information on the basis of reception from the information distribution server in accordance with execution of the waiting program with the processing device* (paragraphs 0028-0031).

Claims 28 and 37:

As per claims 28 and 37, **Shioda** teaches the method and mobile terminal of claims 21 and 30 as described above and further teaches *wherein the request for distributing the information has a user ID for identifying a user of the at least one mobile terminal* (paragraph 0028).

Claim 39:

Claim scope is not limited by claim language that suggests or makes optional but does not require steps to be performed, or by claim language that does not limit a claim to a particular structure (MPEP § 2111.04). Accordingly, no patentable weight was given to the following claim language:

"when said monitored operation situation satisfies a predetermined reference, detecting arrival of a timing for distributing information from the information distribution server to the mobile terminal"

As per claim 39, **Shioda** teaches the method comprising:
monitoring, in the mobile terminal, an operation situation based on execution of said application programs with the processing device (paragraphs 0028-0031).

upon detecting of said timing for distributing information, transmitting, to the information distribution server, a request for distributing the information based on preset contents of the distributed information under the control of the processing device in accordance with execution of said waiting program (paragraphs 0028-0031).

receiving, at the mobile terminal, the information distributed from the information distribution server in response to the request for distributing the information (paragraphs 0006, 0030 and 0031).

outputting the received information to an interface for outputting the information under the control of the processing device in accordance with execution of the waiting program (paragraph 0029).

Claim Rejections - 35 USC § 103

9.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness

rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

10.   Claims 25-26, 29, 34-35 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Shioda et al. US Publication 2002/0044639 A1.

Claims 25 and 34:

As per claims 25 and 34, **Shioda** teaches the method and the mobile terminal of claims 21 and

30 as described above but does not teach *wherein an operating systems, said application programs said*

the waiting program, and a priority between said waiting program and said application programs are

stored in the memory with the at least one mobile terminal, and processing of the said waiting program or

said application programs is executed in with the processing device accordance with the priority thereof

under the operating system. However, it would have been obvious to one of ordinary skill in the art at the

time of the invention of Shioda to prioritize different programs within the mobile terminal. For example,

depending on the different types of cell phones and phone settings, receiving phone calls are ranked first,

receiving e-mail is second, receiving text messages are third. These programs are ranked in a particular

order due to settings and the desired functionality of the phone.

Claims 26 and 35:

As per claims 26 and 35, **Shioda** teaches the method and mobile terminal of claims 21 and 30 as

described above but does not teach *wherein the processing under execution of said waiting program is*

interrupted and said application program is started, upon detecting a request for processing said

application program during execution of said waiting program with the processing device. However, it

would have been obvious to one of ordinary skill in the art at the time of the invention of Shioda to

wherein the program is interrupted upon detecting a request for processing of the program under the

operating system of the mobile terminal. For example, when a user is surfing the Internet on their personal computer, the user is interrupted or bombarded with pop-up advertisements.

Claims 29 and 38:

As per claims 29 and 38, **Shioda** teaches the method and the mobile terminal of claims 21 and 30 as described above but does not teach *wherein the processing device receives a request for changing an output form of the output information in accordance with execution of said waiting program via an input interface of the at least one mobile terminal, and the processing device changes an output form of the distributed information in response to the request for distributing the information in accordance with execution of said waiting program, and outputs the changed output to an output interface of the at least one mobile terminal.* However, it would have been obvious to one of ordinary skill in the art at the time of the invention of Shioda to change the output form (display) of the information in accordance with the program at the mobile terminal. For example, a web site is displayed differently when shown on a desk top computer (wide computer monitor), a laptop (a smaller computer monitor) and a cell phone display screen. These display settings are different because of the size of the computer/cell phone screen and graphical capabilities or limitations.

Response to Arguments

11.   Applicant denies the rejection without distinctly and specifically pointing out the supposed errors in the examiner's action. It is not sufficient to point out the supposed errors in the reference. This fails to comply with 37 CFR 1.111(b). For example, on page 12, applicant attempts to traverse the rejection of claims, but does not distinctly and specifically point out the supposed errors within the Office Action. The applicant discloses "Shioda et al. are silent with respect to a communication terminal device having a waiting program as recited." The Examiner is not sure which claim limitation the applicant is arguing. According to the applicant's specification a waiting program is an objected oriented programming language such as Java. However, Shioda does not explicitly teach a programming language such as

Java programmed to the mobile phone, however, it would have been obvious to program the mobile

phone with a particular code or program in order to allow the mobile phone to communicate with different

systems and devices provide advertisements.

12.   According to applicant's arguments on page 14 discloses, "With respect to dependent claims 23

and 32, the operation situation is further defined as the presence or absence of calls, the amount of traffic

and the amount of various process data using the at least one mobile terminal in accordance with

execution of the waiting program with the processing device. The Examiner refers to paragraph 0070 of

Shioda et al.   However, this portion of Shioda et al. does not disclose the execution of a waiting program

in the mobile terminal." Paragraph 0070 teaches discloses "The communication terminal 10a is first

brought into the off-hook state when the handset is lifted up. This off-hook state is detected by the

communication company facility 20 (Step S501). As the communication company facility 20 detects the

off-hook state, it sends the off-hook detection signal to the communication terminal 10a (Step S502).

Upon receiving the off-hook detection signal, the communication terminal 10a transmits the user-related

information to the communication company facility 20 (Step S503). The telephone number specifying the

call receiving terminal is sent to the communication company facility 20 together with the user-related

information. It should be noted that the telephone number transmission may be performed in a later

procedure when establishing the communication path (Step S509)." which reads on presence or absence

of calls and the amount of traffic. The communication company monitors user phone activity by the off

hook state and receiving signals.

        Claims 21 and 30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for

failing to particularly point out and distinctly claim the subject matter which applicant regards as the

invention (idiomatic English). The first feature of the independent claim recites, *"monitoring an operation

situation based on execution of said application programs with the processing device and detecting arrival

of a timing for distributing information by generation of the operation situation that satisfies a

predetermined criteria for the operation situation under execution of the waiting program with the

processing device"* is unclear to the Examiner. For examination purposes, the Examiner interprets the

claim as the mobile terminal (phone) is constantly being tracked and monitored via a global positioning

system (GPS) or base station. Based on the location information, the mobile terminal receives periodic advertisements and information. Software/programs in the mobile device monitor the mobile terminal location and control when to receive periodic advertisements and information. The applicant has amended the claims to overcome the rejection the rejection has been withdrawn.

Claim 23 is dependent on claim 22, which is a cancelled claim. For examination purposes, the Examiner will interpret the claim is dependent on independent method claim 21. The applicant has amended the claims to overcome the rejection. The rejection has been withdrawn.

Claim 25 recite the limitation "the priority" in lines 3 and 8. There is insufficient antecedent basis for this limitation in the claim. The applicant has amended the claims to overcome the rejection. The rejection has been withdrawn.

Claim 29 is dependent on claim 20, which is a cancelled claim. For examination purposes, the Examiner will interpret the claim is dependent on independent method claim 21. The applicant has amended the claims to overcome the rejection. The rejection has been withdrawn.

Claim 30 is objected to because of the following informalities: A colon is missing after the word "programs" in the preamble. Appropriate correction is required. The applicant has amended the claim to overcome the objection. The objection has been withdrawn.

Conclusion

The prior art of record and not relied upon is considered pertinent to applicant's disclosure.

Ferber US Publication 2001/0032193 A1- System and Method for Transmission of Advertising to Wireless Devices.

Rouhollahzadeh et al. US Patent 6,208,866 B1- System and Method for Location-Based Marketing to Mobile Stations within a Cellular Network.

Smith et al. US Publication 2003/0006911 A1- Interactive Advertising System and Method.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from

the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date

of this final action and the advisory action is not mailed until after the end of the THREE-MONTH

shortened statutory period, then the shortened statutory period will expire on the date the advisory action

is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX

MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should

be directed to MATTHEW L. HAMILTON whose telephone number is (571)270-1837. The examiner can

normally be reached on Monday-Friday 7:30a.m-5p.m EST alt Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor,

Robert Weinhardt can be reached on (571) 272-6633. The fax phone number for the organization where

this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application

Information Retrieval (PAIR) system. Status information for published applications may be obtained from

either Private PAIR or Public PAIR. Status information for unpublished applications is available through

Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC)

at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative

or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-

1000.

MLH   /Donald L. Champagne/
Examiner, Art Unit 3688   Primary Examiner, Art Unit 3688
October 19, 2009   571-272-6717